

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LP MATTHEWS, L.L.C.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1507-SLR
)	
BATH & BODY WORKS, INC.; LIMITED)	
BRANDS, INC.; KAO BRANDS CO.)	
(f/k/a THE ANDREW JERGENS)	
COMPANY); and KAO CORPORATION,)	
)	
Defendants.)	

**LP MATTHEWS' DAUBERT MOTION TO STRIKE THE EXPERT
REPORT AND EXCLUDE THE TRIAL TESTIMONY OF THE
KAO DEFENDANTS' LIABILITY EXPERT ROBERT Y. LOCHHEAD**

Pursuant to the Scheduling Order entered by this Court on June 9, 2005 (D.I. 39), and as set forth in the accompanying memorandum, plaintiff LP Matthews, L.L.C. moves to strike the expert report, opinions, and proffered trial testimony of Defendants KAO Brands Company's and KAO Corporation's ("KAO Defendants") alleged liability expert Dr. Robert Y. Lochhead.

LP Matthews moves to strike Dr. Lochhead's report, opinions, and testimony because paragraphs 12(b)-(f) and 13 of Dr. Lochhead's opening report and the opinions therein do not meet the Supreme Court's requirements for admissibility. Dr. Lochhead simply regurgitates a 1997 non-final decision of the Board of Patent Appeals and Interferences handed down in an abandoned, continuation-in-part patent application involving different claims, a different examination, and a different burden of proof. Dr. Lochhead's conclusory recitation is not made from the perspective of a person of ordinary skill in the art at the time the patent application was filed, includes no independent analysis or elaboration, and is not supported by any professional or education-based knowledge of orange oil – Dr. Lochhead could not identify a single chemical

entity in orange oil other than d-limonene. Thus, his opinions track an inadmissible *post hoc* decision that did not consider the arguments made during the prosecution of the '062 patent.

The grounds for this *Daubert* motion are more fully set forth in LP Matthews' Opening Memorandum Supporting its *Daubert* Motion to Strike the Expert Report and Exclude the Trial Testimony of the Kao Defendants' Liability Expert, Robert Y. Lochhead, filed contemporaneously herewith.

ASHBY & GEDDES

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Dated: June 22, 2006

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Counsel for Plaintiff LP Matthews

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2006, the attached **LP MATTHEWS' DAUBERT MOTION TO STRIKE THE EXPERT REPORT AND EXCLUDE THE TRIAL TESTIMONY OF THE KAO DEFENDANTS' LIABILITY EXPERT, ROBERT Y. LOCHHEAD** was served upon the below-named counsel of record at the address and in the manner indicated:

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